

(2010) 08 MAD CK 0161

In the Madras High Court

Case No : C.R.P. (PD) No"s. 1398 and 1399 of 2008 and M.P. No"s. 1 + 1 of 2008

Sornam and Others

APPELLANT

Vs

A. Venugopal
M. Kiliammal and Others Vs A.
Venugopal and M. Jagadeesan

RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Constitution of India, 1950 — Article 227

Limitation Act, 1963 — Article 54

Citation : (2010) 4 LW 857

Hon'ble Judges : S. Rajeswaran, J

Bench : Single Bench

Advocate : T.V. Ramanujam and Jagadish, for the Appellant; M. Muthukumaraswamy for A. Palaniappan, for the Respondent

Final Decision : Dismissed

Judgement

S. Rajeswaran, J.—As the issue and the parties involved in both these revision petitions are one and the same, a Common order is being

passed to dispose of both the Civil revision petitions.

2. In fact, both the revision petitions have been filed against the Common order dated 01.02.2008 made in I.A. No. 2263 of 2007 in O.S.

No. 143 of 2007 and I.A. No. 2264 of 2007 in O.S. No. 144 of 2007.

3. The facts leading to filing of the above revision petitions are as follows:

The respondent herein as plaintiff filed two suits namely O.S. No. 143 of 2007 and O.S. No. 144 of 2007 on the file of the Principal District

Judge, Chengalput for specific performance of the two sale agreements dated 19.04.2004 executed by the defendant in favour of the plaintiff.

4. The suit schedule property in O.S. No. 143 of 2007 is agricultural lands situated at No. 30, Peerkankaranai Village, Tambaram Taluk,

Kancheepuram District comprised in S. No. 153/1, 2 and 3 admeasuring 1 acre 24 cents out of 2 acres 48 cents. The other 1 acre 24 cents out of

2 acres 48 cents are the schedule mentioned property in O.S. No. 144 of 2007.

5. For the sake of convenience, the facts as stated in O.S. No. 143 of 2007 are considered for disposing off both the above two Civil revision

petitions together.

6. The suit schedule property was originally owned by Thiru Kodiyan, son of Koyilan who had purchased the said property by conveyance Deed

dated 19.11.1945 registered as Doc. No. 1930/45 on the file of the Sub Registrar office, Pallavaram. Subsequently, the above said Kodiyan

passed away on 25.8.1995 leaving behind his daughter Tmt. Nagambal (now deceased) and his two sons Thiru K.Muthur and K.Murugesan

(both of them deceased). The daughter and the two sons of Kodiyan inherited the suit property and subsequently, Thiru K.Muthur passed away on

11.9.1972 leaving behind the defendants 1 to 8 as his legal heirs and Kodiyan's second son Thiru K.Murugesan died on 9.11.1986. Tmt.

Nagambal, daughter of Kodiyan and the wife of late Etti died intestate on 8.8.2006 leaving behind the defendants 9 to 17 as her legal heirs.

7. Tmt. Nagambal, the daughter of the deceased Kodiyan and mother, mother-in-law and grandmother of the defendants 9 to 17, defendants 1 to

8 who are all wife, sons, daughters, son-in-law, grand sons and grand daughters of the deceased K. Muthu jointly entered into a sale agreement

with the plaintiff agreeing to convey the suit schedule property to the plaintiff for a sale consideration of Rs. 48,36,000/-. Accordingly, the major

extent of 2 acres 48 cents were bifurcated into two portions each consisting of 1 acre and 24 cents for convenient purposes and two separate sale

agreements were entered into between the plaintiff and the defendants. At the time of execution of the sale agreement, the plaintiff paid a sum of

Rs. 15 lakhs as advance amount to the defendants and the time to conclude the sale consideration is within eleven months. Since the said property

was agricultural lands, a lot of technical formalities were involved to convert those lands into residential plots. Further, lay-out permission had to be

obtained from C.M.D.A. Therefore, the defendants executed a comprehensive

general power of attorney dated 19.4.2004 registered as Doc. No.

836 of 2004 on the file of the Sub Registrar, Tambaram. As per the Power of Attorney, the plaintiff was empowered to deal with the property for

the purpose of obtaining the lay-out permission from the C.M.D.A On the basis of power of attorney, the plaintiff converted the agricultural lands

into residential plots and obtained the lay-out permission on 3.2.2008.

8. According to the plaintiff, both the sale agreements dated 19.4.2004 and the power of attorney were already acted upon and they have not

been resented by the defendants.

9. The plaintiff after obtaining the lay-out permission from the appropriate authority, expressed his readiness and willingness to conclude the sale

transaction as per the sale agreements dated 19.4.2004. He also sent a notice dated 17.3.2005 in this regard.

10. Subsequent to the sale agreement dated 19.4.2004, serious disputes arose between Tmt.Nagambal, daughter of Kodiyan and the other

defendants. As the plaintiff was aware of the differences of opinion between Tmt.Nagambal and the other defendants, the plaintiff was constantly

insisting upon the defendants to conclude the sale transaction in his favour. As it was not done, he sent the notice dated 17.3.2005 calling upon the

defendants to conclude the sale transaction.

11. In the meantime, the defendants attempted to dispossess the plaintiff from the possession of the suit property with malafide intention to drive

away the plaintiff from the suit property. In fact, the plaintiff was put in possession of the suit schedule property on the basis of the two sale

agreement dated 19.4.2004. Therefore, he filed a suit for bare injunction in O.S. No. 67 of 2005 on the file of the District Munsif Court,

Tambaram, restraining the defendants from in any way interfering with the plaintiff peaceful possession and enjoyment of the suit schedule property.

Along with the suit, an application in I.A. No. 293 of 2005 was filed for an order of interim injunction and in fact, the District Munsif Court initially

granted the interim injunction which was subsequently made absolute.

12. Tmt. Nagambal, the daughter of Kodiyan and others also filed O.S. No. 44 of 2005 on the file of the District Court, Chengalput against the

defendants 1 to 8 and others seeking the relief of partition.

13. As already mentioned Tmt. Nagambal died intestate on 18.8.2006, the District Court, Chengalput referred O.S. No. 44 of 2005 to Lok

Adalat for effecting amicable settlement. However, it ended in a failure.

14. To the notice dated 17.3.2005 sent by the plaintiff, a reply notice dated 1.4.2005 was sent by the defendants. In their reply dated 1.4.2005,

the defendants informed that the two sale agreements and the Power of Attorney were cancelled. Therefore, a rejoinder was sent by the plaintiff's

counsel on 11.04.2005 to the defendants. They also sent a reply to the rejoinder on 22.04.2005.

15. Another notice dated 2.5.2005 was sent by the plaintiff to the defendants calling upon them to conclude the sale transaction, but, by reply

notice dated 5.5.2005, the defendants negated the plaintiff's request. Thereafter, another notice dated 23.6.2005 was sent by the plaintiff calling

upon the defendants to conclude the sale transaction. It is the case of the plaintiff that the plaintiff is a man of means and he is always ready and

willing to conclude the sale transaction. In such circumstances, the plaintiff filed the suit for specific performance and for the other alternative reliefs

also.

16. Pending suit, I.A. No. 2263 of 2007 was filed by the defendants 1 and 3 to 8 under Order VII Rule 11(d) ready with Order II Rule 2(3) and

Section 151 C.P.C. seeking to reject the plaint.

17. In the affidavit filed in support of I.A. No. 2263 of 2007, it was accepted that the plaintiff filed O.S. No. 67 of 2005 on the file of the District

Munsif Court, Tambaram for a bare injunction restraining the defendants from interfering with the plaintiff's possession on the ground that the

plaintiff was placed in possession in part performance of the contract dated 19.4.2004. It was further admitted that interim injunction was granted

and the same was also made absolute on 7.7.2005. However, the defendants filed an Appeal in C.M.A. No. 32 of 2005 and the same is pending

on the file of the Principal Sub Judge, Chengalput.

18. It was specifically stated in the affidavit that the suit filed now for the relief of Specific Performance is barred under Order II Rule 2 and is liable

to be rejected as the cause of action for filing the suit for Specific Performance was already there at the time of filing of O.S. No. 67 of 2005. As

no leave was obtained by the plaintiff from the District Munsif Court, Tambaram

to file a suit for Specific Performance at a later stage, the present suit is barred under Order II Rule 2 C.P.C. and the same is liable to be rejected under Order VII Rule 11 C.P.C.

19. Similar application was filed in I.A. No. 2264 of 2007 in the other suit filed in O.S. No. 144 of 2007.

20. The plaintiff as respondent filed a counter wherein it was stated that the cause of action for filing O.S. No. 67 of 2005 pertains to the illegal attempt made by the defendants to trespass into the suit property and to dispossess the plaintiff.

21. Only to safeguard his possession as was legally tendered to him by the defendants after receiving a sum of Rs. 15 lakhs towards the sale

consideration, O.S. No. 67 of 2005 was filed by the plaintiff. It was further pointed out that the Appeal filed by the defendants in C.M.A. No. 32

of 2005 was disposed of in favour of the defendants and therefore, the plaintiff filed C.R.P. No. 2900 of 2007 before this Court. This Court on

21.9.2007 directed to dispose of O.S. No. 67 of 2005 together with O.S. No. 143 of 2007, O.S. No. 144 of 2007 and O.S. No. 44 of 2005.

Thus, the High Court combined all the Civil suits and therefore, the application filed under Order II Rule 2 C.P.C. to reject this suit alone is not

maintainable.

22. It is denied by the plaintiff that the cause of action for O.S. No. 67 of 2005 and for the present suit is one and the same.

23. Hence, he prayed for the dismissal of the applications. The trial court by a common order dated 01.02.2008 dismissed both the applications

and aggrieved by the same, the defendants 1 and 3 to 8 have filed the above two revision petitions under Article 227 of the Constitution of India.

24. I have heard Thiru T.V. Ramanujam, the learned Senior counsel for the revision petitioner and Mr. Muthukumaraswamy, the learned Senior

counsel for the respondents. I have also gone through the entire records filed by both the parties.

25. The learned Senior counsel for the revision petitioners relying on the decisions rendered by this Court and reported in

1. Raptakos Brett and Co. Pvt. Ltd. Vs. Modi Business Centre (Pvt.) Ltd.,

2. (2007) 4 M.L.J. 1145 (Kumarayee Ammal and Ors. v. M. Ramanathan rep. By his Power Agent S.P. Kathiresan)

submitted that in a case of this nature what is to be considered is, whether the cause of action now urged for the present suit was available at the time of filing the first suit or not. The learned Senior counsel contended that even at the time of filing the earlier suit, the agreement was said to be violated by the defendants and in such circumstances, the plaintiff ought to have filed a comprehensive suit for Specific performance also or else, ought to have obtained the leave of the court to file such a suit at a later stage. As the plaintiff has miserably failed to do both of the above mentioned actions, the learned Senior counsel submits that the latter suit is barred under Order II Rule 2 and the same is liable to be rejected.

26. Per contra, the learned Senior counsel appearing for the plaintiff submits that the cause of action for the earlier suit is totally different from the cause of action for the latter suit. He submitted that the plaintiff was put in possession on the basis of the sale agreements and while in possession, the plaintiff converted the suit schedule property from agricultural lands to residential plots and also obtained the necessary permission from the local authorities for making the lands into residential plots. When the plaintiff is in legal possession of the suit property, an attempt was made by the defendants to dispossess the plaintiff and therefore, the plaintiff had only filed a bare injunction suit to protect his possession which cannot be found fault with. The learned Senior counsel further pointed out that the time contemplated in the sale agreement to complete the sale transaction is eleven months and this eleven months period has not expired at the time of filing the earlier suit and therefore, the latter suit is not barred under Order II Rule 2 C.P.C. The learned Senior counsel further pointed out that the trial court considered the law in this regard and dismissed both the

applications which need not be interfered with by this Court under Article 227 of Constitution of India.

27. The learned Senior counsel for the respondents relies on the judgments of the Hon"ble Supreme Court reported in

1. D.S. Thimmappa Vs. Siddaramakka,
2. Dalip Singh v. Mehar Singh Rathee and Ors., (2004) 7 SCC 650

in support of his submissions.

28. I have considered the rival submissions carefully with regard to facts and citations.

29. In the light of the above facts, the only question that arises for consideration in these revision petitions i.e., whether the latter suit filed by the plaintiff for Specific performance is barred by Order II Rule 2 C.P.C. and consequently both the suits are liable to be rejected under Order VII Rule 11 C.P.C.

30. Before proceeding to answer the question involved in this matter, Order VII Rule 11 C.P.C. and Order II Rule 2 C.P.C. could be usefully referred to which read as follows:

Order 2 Rule 2:

2. Suit to include the whole claim:

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any court.

(2) Relinquishment of part of claim:

Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs:

A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation: For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

31. A reading of the above provisions would make it very clear that the suit would contain the whole of the claim in support of the cause of action, it is upto the plaintiff to relinquish any portion of the suit in order to bring the suit within the jurisdiction of any court. When the plaintiff omits to sue in respect of any portion of the claim, the plaintiff shall not be allowed to sue in respect of the portion so omitted or relinquished. At the same time, leave could be obtained from the court to sue for some of the reliefs at a latter point of time in respect of the same cause of action while filing a suit

for some reliefs only. Thus, it is very clear that when the cause of action arises for filing a comprehensive suit, either the plaintiff can file a comprehensive suit or he can omit a portion and file the suit only for a lesser portion of reliefs. Further, if the leave is obtained from the court for agitating the omitted portion at a latter point of time, then the plaintiff can file another suit for the omitted reliefs and if the leave is not obtained, then the plaintiff cannot be allowed to file another suit for the omitted reliefs.

Order VII Rule 11:

Rejection of plaint: The plaint shall be rejected in the following cases:

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff on being required by the court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- [(e) where it is not filed in duplicate;]
- [(f) where the plaintiff fails to comply with the provisions of Rule 9]

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of action of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.

High Court Amendment (Madras): For Clause (c) substitute the following:

(c) Where the relief claimed is properly valued, but the plaint is written on paper insufficiently stamped, and the plaintiff does not make good the deficiency within the time, if any, granted by the Court.

32. From the above, it is very clear that Order VII Rule 11(d) enables the court to reject a plaint, it appears from the statement in the plaint that it

is barred by common law.

33. In the present case, the contention of the revision petitioners is that the suit is barred by Order II Rule 2 C.P.C. and therefore, the plaint is liable to be rejected.

34. To find out whether Order II Rule 2 C.P.C. gets attracted in a given case, the plaints filed in both the suits should be gone into to arrive at the fact whether there was a cause of action for the plaintiff for filing a comprehensive suit at the time of filing the previous suit itself.

35. A perusal of the plaint filed in O.S. No. 67 of 2005 will show that the plaintiff was put in possession of the suit property on the basis of the sale

agreement dated 19.4.2004 only. Subsequent to the execution of the sale agreement dated 19.4.2004, some dispute prevailed between the

defendants pertaining to the division of sale consideration and some serious doubts arose between the defendants. Accordingly, the first defendant

originally executed a Release Deed in favour of the other defendants and thereby relinquished all her rights pertaining to 1/3rd share of the suit

property. However, she took a different decision and terminated the earlier Release Deed executed by her. Therefore, it was specifically averred

by the plaintiff in O.S. No. 67 of 2005 that it has been fully established that the defendants having received a very huge amount as advance

towards the sale consideration wanted to delay the sale process with a deliberate intention taking advantage of the misunderstanding between them

in order to avoid fulfilment of sale transaction. It was further stated in the previous suit that on 13.03.2005 that all the defendants with a malafide

intention to sustain pressure and loss attempted to dispossess the plaintiff from the suit property. Hence, he filed the previous suit for permanent

injunction restraining the defendants dispossessing the plaintiff from the suit schedule property other than the due process of law.

36. The cause of action stated in the paragraph 7 of the previous suit reads as follows:

7 The cause of action for the above suit arose at No. 30, Peerkankaranai Village, Tambaram Taluk and Firka, Kancheepuram District comprised

in Survey No. 153/1, 2 & 3 bearing patta No. 1171, 1144, 1865, land admeasuring 2 acres 48 cents, wherein the suit property situated and has

been originally owned by first defendant father and other defendants grand

father Mr.Kodiyan, son of Mr.Koilan, who had purchased the same in andby conveyance deed dated 19.11.1945, bearing document No. 1930 of 1945. The aforesaid Mr. Kodiyan died on 25.8.1955, leaving behind his daughter that is first defendant herein and two sons Mr. K. Muthu and Mr. K. Murugesan as his legal heirs subsequently the aforementioned Mr. Kodiyan's two sons Mr. K. Muthu and Mr. K. Murugesan died on 11.9.1972 and 9.11.1986 respectively. The defendants two to fifteen are respective legal heirs of K. Muthu and K. Murugesan. Subsequently, all the defendants had jointly executed a sale agreement on the defendants had jointly executed a sale agreement on 19.4.2004 in favour of the plaintiff and huge sum has been mentioned as the sale consideration and 11 months period has been mentioned for fulfilment of sale transaction. Accordingly, a huge sum had been advanced by the plaintiff to defendants. The defendants also empower the plaintiff to convert the barren land into residential plots, effect layout, necessary sub-divisions and obtain layout permission from C.M.D.A. and other incidental permission from appropriate authorities. For the further confirmation of the aforementioned sale agreement, the defendants also executed a Comprehensive General Power of Attorney bearing Document No. 836/2004 dated 19.4.2004 thereby further empowering the plaintiff to act on behalf of the defendants and handed over the possession of the suit property in favour of the plaintiff. Subsequently, sub dispute had been prevailing between the defendants pertaining to division of sale consideration and some serious differences arose between the defendants. On 13.3.2005 all the defendants with a malafide intention to sustain pressure and loss over the plaintiff had attempted to dispossess the plaintiff from the suit property are well within the jurisdiction of this Court.

37. A perusal of the plaint filed in O.S. No. 143 of 2007 will show that a sale agreement was entered into between the plaintiff and the defendants and on that basis a sum of Rs. 15 lakhs was paid by the plaintiff to the defendants as advance amount and he was put in possession of the suit schedule property. After the execution of the sale agreement dated 19.4.2004, serious dispute arose between the first defendant in the earlier suit and the other defendants. Without the knowledge of the plaintiff, the first defendant in the earlier suit executed a Release Deed in favour of the

other defendants. But, however, the same was cancelled by her later on. It was further stated in the present suit that as the plaintiffs were aware of the above said differences of opinion among the defendants, he constantly insisted upon all the defendants to conclude the sale transaction in favour of the plaintiff. Therefore, the plaintiff has no other option except to send a legal notice to the defendants on 17.3.2005 thereby calling upon the defendants to conclude the sale transaction. It was stated in the latter suit that in the meanwhile the defendants attempted to dispossess the plaintiff from the possession of the suit property with a malafide intention to drive away the plaintiff from the suit property. Hence, the plaintiff was constrained to file a bare injunction suit in O.S. No. 67 of 2005 restraining the defendants from dispossessing the plaintiff from the suit schedule property.

38. The cause of action "para as stated in the latter suit at para 18 reads as follows:

18. The cause of action for the above suit arose at Peerkankaranai Village, Tambaram Taluk and Firka, Kancheepuram District, comprised in Survey No. 153/1, 153/2 and 153/3, agricultural land admeasuring acre 1 and 24 cents out of 2 acres and 48 cents, wherein the suit property situated wherein on 19.4.2004 all the defendants joined together thereby agreed to convey the suit property to the plaintiff and on the same date a sale agreement has been transacted between the plaintiff and defendants and on that day the plaintiff agreed to purchase the suit property for a sale consideration of Rs. 48,36,000/- (Rupees forty eight lakhs and thirty six thousand only) and paid a sum of Rs. 15,00,000/- (Rupees fifteen lakhs only) as an advance amount. On the same date the defendants had conferred a comprehensive General Power of Attorney in favour of the plaintiff excluding the right to alienate thereby enable the plaintiff to convert the barren land into residential plots and subsequently the defendants evaded to conclude the sale transaction and on 17.3.2005 the plaintiff called upon the defendants to conclude the sale transaction and by reply notice dated 1.4.2005, the defendants informed the plaintiff about the termination and cancellation of sale agreement and Power of Attorney and by rejoinder dated 11.4.2005 the plaintiff submits his further readiness and willingness to purchase the suit property and on 22.04.2005 the defendants call

upon the plaintiff to hand over the vacant possession of the suit property which has been negated by the plaintiff by his reply notice dated

2.5.2005 and the defendant caused further legal notice on 5.5.2005 which has been promptly replied by the plaintiff through his counsel on

23.6.2005 and subsequently in order to safeguard the plaintiff possession, the plaintiff had filed O.S. No. 67 of 2005 on the file of District Munsif

Court at Tambaram and in the meantime due to the differences of opinion between the Mrs. Nagammal d/o Kodiyan and other defendants. Mrs.

Nagammal, D/o Kodian filed O.S. No. 44 of 2005 on the file of District Court at Chengalput and subsequently Mrs. Nagammal died on

18.8.2006 subsequently the defendants deliberate failure to conclude the sale transaction in spite of plaintiff readiness and willingness and on

9.4.2007 the defendants brought some real estate agent nearby the suit property with mala fide intention to sell the suit property which are all within

the jurisdiction of this Court.

39. Now, it is to be seen in the light of the facts as stated in both the plaints, whether there was a cause of action for the plaintiff to file a

comprehensive suit at the time of filing the earlier suit itself.

40. Before proceeding to answer the above question, let me consider the legal decisions relied on by both the parties to cull out the legal principles

settled thereon.

41. In D.S. Thimmappa Vs. Siddaramakka, , the Hon'ble Supreme Court observed as follows:

6. It is settled law that unless the deed of agreement of sale stipulated a date for performance, time is not always of the essence of the contract. It

would be seen that Thimmappa had the land purchased from the respondent and there was an agreement of reconveyance on the condition that the

respondent should return the consideration paid under the sale deeds, viz., Rs. 5000 within eight years from that date. The appellant had gone to

the extent of even denying the executing of reconveyance. Therefore, the High Court has gone into the question of the probability of the respondent

approaching the appellant for reconveyance before the expiry of the limitation. The High Court has, therefore, rightly gone into the question

whether there was an agreement of reconveyance and whether the respondent had performed her part of the contract in seeking reconveyance.

That being the material question which hinges upon the discretion to be exercised by the court to enforce for specific performance of the contract, the appellate court had not adverted to that material part. But merely it relied upon the plea of limitation. Under those circumstances, the High Court has not committed any error of law in interfering with the decree of the appellate court and considering relevant circumstantial evidence that unless the respondent had in the first instance approached and the appellant avoided the receipt of the consideration and execution of sale deed, the respondent had no occasion to approach an advocate to get the notice issued asking the appellant to be present before the Sub-Registrar for execution of sale deed under Article 54 of the Schedule to the Limitation Act, 1963 (21 of 1963). Limitation for specific performance begins to run from the date fixed in the contract or from the date of refusal to execute the sale deed. Since time is not the essence of the contract, the respondent had offered the payment of the amount before the expiry of the date of reconveyance but the appellant had refused to reconvey the same. The cause of action arose on expiry of eight years from the date of execution of the later sale deed, i.e., 20-7-1973. The appellant by conduct refused to execute the sale deed on 19-7-1976, the suit was filed on 20-7-1976. The suit was filed within limitation from the date of refusal, i.e., 19-7-1976, i.e., next day. It is not a case of appreciation of evidence by the High Court in second appeal but one of drawing proper inference from proved facts which the first appellate court has failed in law to draw proper inference from proved facts and non-application of law in the proper perspective. We, therefore, hold that the suit was filed within limitation. We do not find any illegality warranting our interference.

42. This judgment was relied on by the learned Senior counsel for the respondent/plaintiff to submit that the cause of action for filing the comprehensive suit which includes a prayer for the Specific performance did not arise at the time of filing the earlier suit as the time stipulated in the agreement was not expired at that time.

43. A perusal of the judgment will show that the facts contained therein are totally different from the facts of the present case and therefore, this decision is not at all useful to the case of the respondent/plaintiff.

44. In Dalip Singh v. Mehar Singh Rathee and Ors., (2004) 7 SCC 650 , the

Hon"ble Supreme Court held as follows:

12. Counsel for the appellant strenuously contended that the suit was barred under Order 23 Rule 1 CPC as Respondent 1 had withdrawn the suit

filed by him for permanent injunction and filed the suit for specific performance without seeking permission of the court. According to him, since the

second suit was filed without obtaining the leave of the court the same was barred under Order 23 Rule 1 CPC. We do not find any substance in

this plea. The plea that the suit was barred under Order 23 Rule 1 CPC was not taken in the written statement and no issue was framed to that

effect. This plea was raised for the first time before the first appellate court which was negatived. Plea that the suit was barred under Order 23

Rule 1 CPC was not taken before the High Court. Under the circumstances the appellant cannot be permitted to take this plea before us.

Contention of the learned Counsel for the appellant that the suit filed by Respondent 1 was barred under Order 2 Rule 2 CPC is not sustainable on

two counts. Firstly, the plea of applicability of Order 2 Rule 2 CPC and the subsequent suit being barred was not taken by the appellant in his

written statement filed in response to the notice of the suit nor was any issue framed on the point. The sine qua non for applicability of Order 2 Rule

2 CPC is that a person entitled to more than one relief in respect of the same cause of action has omitted to sue for some relief without the leave of

the court. When an objection regarding bar to the filing of the suit under Order 2 Rule 2 CPC is taken, it is essential for the court to know what

exactly was the cause of action which was alleged in the previous suit in order that it might be in a position to appreciate whether the cause of

action alleged in the second suit is identical with the one that was the subject-matter of the previous suit. As the plea had not been raised in the

written statement and no issue framed on this point, no opportunity was provided to Respondent 1 to lead evidence to rebut the same. In the

absence of pleadings and proof of identity of cause of action, the appellant could not be permitted to raise the plea of bar of Order 2 Rule 2 CPC.

The High Court had gone into merits as well and held that the two suits filed by Respondent 1 were not based on the same cause of action. We

need not examine this on merit as we have held that in the absence of pleadings or the issue regarding the bar of Order 2 Rule 2 CPC in filing the

suit the appellant cannot be permitted to raise such a plea.

45. In the above decision, the fact remains that no plea was taken at all by the defendants contending that the suit filed by the plaintiff was barred

by Order II Rule 2 C.P.C. In fact, such plea was neither taken in the written statement nor an issue was framed on that point. Therefore, this

judgment could be distinguished easily on facts and it will not be applicable to the facts of the present case.

46. In Raptakos Brett and Co. Pvt. Ltd. Vs. Modi Business Centre (Pvt.) Ltd., , the learned Judge of this Court observed as follows:

12. The real test should be whether the causes of action now urged for the present suit, were available at the time of the filing of the first suit or not.

In the instant case, the causes of action for filing a suit for specific performance were very well available at the time of the first suit. Non-mentioning

of certain facts on the cause of action which was very well available, cannot be a reason to come out of the clutches of Order 2, Rule 2 of C.P.C.

That apart, the relief what has been now asked for should have been asked that time itself, but omitted to be done. Allowing the contention put

forth by the learned Senior counsel for the plaintiff that the defendant should be allowed to file the written statement raising such a defence plea;

that issues have to be framed; that the parties must be allowed to let in evidence on that issues; and that the court should decide on the same would

be against the provisions under Order 2, Rule 2 of C.P.C. If allowed to be done so, it would be nothing but directing the defendant to undergo the

ordeal of trial. Apart from that, it would be against the public policy. Allowing a party to ask a relief in piecemeal, according to his convenience,

would also be against the public policy.

13 From the materials available, it is quite clear that those causes of action were very well available on the stated facts at the time of the filing of the

earlier suit. It remains to be stated that both the causes of action refer only to the agreement in question, and it is not a new agreement entered into

in 1999 as put forth by the plaintiff's side; but, it is only a confirmation of the earlier agreement, as per the plaint averments. Hence, it would be

abundantly clear that cause of action was very well available, but knowingly and deliberately omitted to be mentioned. This Court is of the view

that here is a clear case where Order 2 Rule 2 has got to be applied, and

accordingly, the plaint has go to be rejected.

47. In the above decision, this Court has clearly held that the rule requires whether the causes of action now urged for the present suit were

available at the time of filing of the first suit or not. Having held so, this Court found that the causes of action for filing a suit for Specific

performance were very well available at the time of filing the first suit and not mentioning of certain facts on the cause of action which was very well

available could not be a reason to come out within the clutches of Order II Rule 2 C.P.C.

48. In 2007 (4) M.L.J. 1145 (cited supra), the learned Judge of this Court held as follows:

12. The real test should be whether the causes of action now urged for the present suit were available at the time of the filing of the first suit or not.

In the instant case, the causes of action for filing a suit for specific performance were very well available at the time of the first suit. Non-mentioning

of certain facts on the cause of action which was very well available, cannot be a reason to come out of the clutches of Order 2, Rule 2 C.P.C.

That apart, the relief what has been now asked for, should have been asked that time itself, but omitted to be done. Allowing the contention put

forth by the learned Senior counsel for the plaintiff that the defendant should be allowed to file the written statement raising such a defence plea;

that issues have to be framed; that the parties must be allowed to let in evidence on that issues; and that the Court should decide on the same

would be against the provisions under Order 2, Rule 2 of C.P.C. If allowed to be done so, it would be nothing but directing the defendant to

undergo the ordeal of trial. Apart from that, it would be against the public policy. Allowing a party to ask a relief in piecemeal, according to his

convenience, would also be against the public policy.

16. At this juncture, the judgment of the Hon''ble Supreme Court of India in N.V. Srinivasa Murthy and Others Vs. Mariyamma (dead) by

Proposed LR's. and Others, , relied on by the learned Counsel for the petitioners requires to be referred to. In paragraph 13 of the judgment, the

Hon''ble Supreme Court has held as follows:

13. In paragraph 11 of the plaint, the plaintiffs have stated that they had earlier instituted Original Suit No. 557 of 1990 seeking permanent

injunction against defendants and the suit was pending when the present suit was filed. Whatever relief the petitioners desired to claim from the civil

Court on the basis of averment with regard to the registered sale deed of 1953 could and ought to have been claimed in Original Civil Suit No.

557 of 1990 which was pending at that time. The second suit claiming indirectly relief of declaration and injunction is apparently barred by Order

2, Rule 2 of the C.P.C.

The principle laid down by the Hon''ble Supreme Court squarely applies to the instant case and the same clearly supports the conclusion arrived at

by me supra.

17 Following the above judgments of the Hon''ble Supreme Court, this Court in a case involving facts similar to the facts involved in the case on

hand has held that a subsequent suit is barred under Order 2 Rule 2 of the causes of action for filing a suit for specific performance were very well

available at the time of the first suit. In paragraph 12 and 13 of the said judgment in Raptakos Brett and Co. Pvt. Ltd. v. Modi Business Centre

(Pvt.) Ltd. (supra), has held as follows at pp.417 & 418 of MLJ:

12. The real test should be whether the causes of action now urged for the present suit were available at the time of the filing of the first suit or not.

In the instant case, the cause of action for filing a suit for specific performance were very well available at the time of the first suit. Non-mentioning

of certain facts on the cause of action which was very well available, cannot be a reason to come out of the clutches of Order 2, Rule 2 of C.P.C.

That apart, the relief what has been now asked for, should have been asked that time itself, but omitted to be done. Allowing the contention put

forth by the learned Senior counsel for the plaintiff that the defendant should be allowed to file the written statement raising such a defence plea;

that issues have to be framed; that the parties must be allowed to let in evidence on that issues; and that the Court should decide on the same

would be against the provisions under Order 2, Rule 2 of C.P.C. If allowed to be done so, it would be nothing but directing the defendant to

undergo the ordeal of trial. Apart from that it would be against the public policy. Allowing a party to ask a relief in piecemeal, according to his

convenience, would also be against the public policy.

13. From the materials available, it is quite clear that those causes of action were

very well available on the stated facts at the time of the filing of the earlier suit. It remains to be stated that both the causes of action refer only to the agreement in question, and it is not a new agreement entered into in 1999 as put forth by the plaintiff's side; but, it is only a confirmation of the earlier agreement, as per the plaint averments. Hence, it would be abundantly clear that cause of action was very well available, but knowingly and deliberately omitted to be mentioned. This Court is of the view that here is a clear case where Order 2 Rule 2 has got to be applied, and accordingly, the plaint has got to be rejected.

As found by me in the previous paragraphs of this judgment, the respondent had cause of action to file a comprehensive suit for specific performance and other reliefs. So, I have no hesitation to hold that the suit in O.S. No. 126 of 2005 is barred under Order 2 Rule 2 C.P.C.

18. Yet another judgment of the Hon'ble Supreme Court relied on by the learned Counsel for the petitioners is the one reported in *Sidramappa*

Vs. Rajashetty and Others, in paragraph 7, the Hon'ble Supreme Court has held as follows:

The requirements of Order 2, Rule 2, C.P.C. is that every suit should include the whole of the claim which the plaintiff is entitled to make in respect

of a cause of action. "Cause of action" means the "cause of action for which the suit was brought". It cannot be said that the cause of action on

which the present suit was brought is the same as that in the previous suit. Cause of action is a cause of action which gives occasion for and forms

the foundation of the suit. If that cause of action enables a person to ask for a larger and wider relief than that to which he limits his claim, he cannot

afterwards seek to recover the balance by independent proceedings.

49. In the above judgment also, this Court reiterated the principle that the real test should be whether the causes of action now urged for the

present suit were available at the time of the filing of the first suit or not. Further, referring to the judgment of the Hon'ble Supreme Court reported

in *Sidramappa Vs. Rajashetty and Others*, this Court held that causes of action means, the cause of action, for which the suit was brought and if

the cause of action enables a person to ask for a larger and wider relief than that to which he limits his claim, he can afterwards seek to recover the

balance by independent proceeding.

50. In the light of the above judgments, if the facts of the present case are perused carefully, I am of the considered view that the cause of action

for filing a comprehensive suit which includes the relief of Specific performance of the sale agreement was very much available even at the time of

filing the previous suit.

51. It is not in dispute that the plaintiff was put in possession on the basis of the sale agreement dated 19.4.2004. It is admitted by the plaintiff

categorically in the previous suit itself that with deliberate intention the defendants are delaying the sale process in order to avoid fulfilment of sale

transaction. It was also admitted in the previous suit itself that with a malafide intention the defendants on 13.3.2005 attempted to dispossess the

plaintiff from the suit property. This was reiterated by the plaintiff in the present suit also by stating that he was constrained to cause a legal notice

to the defendants on 17.3.2005 calling upon the defendants to conclude the sale transaction.

52. It was further admitted in the present suit that an attempt was made by the defendants to dispossess the plaintiff from the suit schedule property

with a malafide intention to drive away the plaintiff from the suit property.

53. If that being so, it is crystal clear that the defendants not only wanted to dispossess the plaintiff from the suit property but also violated the sale

agreement dated 19.4.2004 in its entirety. In such circumstances, when the plaintiff filed O.S. No. 67 of 2005 for bare injunction to protect his

possession, he ought to have stated the other reliefs also as the cause of action for filing the Specific performance suit arose then itself. It is illogical

to think that the defendants wanted to dispossess the plaintiff and only after dispossessing him from the suit schedule property they would come

forward to execute the sale deed. Therefore, once forcible eviction itself was attempted, it goes without saying that the sale agreement dated

19.4.2004 was treated with contempt by the defendants and therefore, the plaintiff ought to have filed a comprehensive suit at that time instead of

filing merely a bare injunction suit to protect his possession. Therefore, I am of the considered view that the present suit is barred by Order II Rule

2 C.P.C. as the plaintiff did not get any leave from the court at the time of filing the suit. Hence, the present suit is liable to be rejected as the same

is barred by the legal provision namely Order II Rule 2 C.P.C.

54. In so far as the order passed by this Court in C.R.P. No. 2900 of 2007 is concerned, it is no doubt true that on 21.09.2007 this Court

directed to dispose of O.S. No. 143 of 2007 and O.S. No. 144 of 2007, O.S. No. 44 of 2005 and O.S. No. 67 of 2005 within a period of three

months from the date of receipt of a copy of the order. However, the Judge on 24.10.2007 modified the earlier order and accordingly, directed

the Principal District Judge, Chengalput to dispose of I.A. No. 2264 of 2007 in O.S. No. 143 of 2007 and I.A. No. 2263 of 2007 in O.S. No.

144 of 2007 within a period of three months from the date of receipt of copy of the order and thereafter suit in O.S. No. 143 of 2007 and O.S.

No. 144 of 2007, O.S. No. 44 of 2005 and O.S. No. 67 of 2005 shall be disposed of by the learned District Judge, Chengalput subject to the

result of I.A. No. 2264 of 2007 in O.S. No. 143 of 2007 and I.A. No. 2263 of 2007 in O.S. No. 144 of 2007.

55. From the above, it is very clear that the earlier order was modified and therefore, the order passed by this Court in C.R.P. No. 2900 of 2007

is not an impediment to reject the plaint.

56. The learned trial Judge has obviously got it wrong by observing that there is no cause of action for the plaintiff to file a comprehensive suit at

the time of filing the earlier suit. When the plaintiff was attempted to be thrown out of the suit schedule property by violating the sale agreement,

there was a definite cause of action for the plaintiff to enforce the sale agreement. As that relief was not asked for and the only relief of protecting

the possession alone was prayed for in the previous suit, the plaintiff omitted to pray for the relief of Specific performance of the sale agreement

and it is obvious that no leave was obtained from the trial court for filing a fresh suit for the omitted portion. Hence, the plaintiff cannot file the

present suit for the omitted relief of Specific performance of the sale agreement.

57. Therefore, I have no hesitation in setting aside the orders passed by the trial court and accordingly, the common order dated 1.2.2008 made in

I.A. No. 2263 of 2007 in O.S. No. 143 of 2007 and I.A. No. 2264 of 2007 in O.S. No. 144 of 2007 is set aside. Consequently, both the

present suits namely O.S. No. 143 of 2007 and O.S. No. 144 of 2007 are rejected as they are barred by order II Rule 2 C.P.C..

58. In the result, both the Civil Revision petitions are allowed. No cost.